

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION**CHAPTER 6. CORPORATION COMMISSION****INVESTMENT MANAGEMENT**

Editor's Note: The Editor's Note below is no longer applicable because all of the rules in this Chapter were reviewed by the Attorney General or the Governor's Regulatory Review Council. The Chapter is printed on white paper (Supp. 01-2).

Editor's Note: The Corporation Commission has determined that rules in this Chapter are exempt from the Attorney General certification provisions of the Arizona Administrative Procedure Act (A.R.S. § 41-1044) by a court order (State ex rel. Corbin v. Arizona Corporation Commission, 174 Ariz. 216, 848 p.2d 301 (App. 1992)). This exemption means that the rule was not approved by the Attorney General. Because this Chapter was filed under a rulemaking exemption, as determined by the Corporation Commission, other than a statutory exemption, the Chapter is printed on green paper.

(Authority: Article XV, §§ 4,6, and 13, Constitution of Arizona, and A.R.S. § 44-3131)

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

Article 1, consisting of Sections R14-6-101 thru R14-6-104, adopted effective July 19, 1996 (Supp. 96-3).

Section

- R14-6-101. Definitions
- R14-6-102. Scope of Provisions
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- R14-6-105. Processing of Applications for Investment Adviser and Investment Adviser Representative Licensure
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ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

Article 2, consisting of Sections R14-6-201 thru R14-6-209, adopted effective July 19, 1996 (Supp. 96-3).

Section

- R14-6-201. Books and Records of Investment Advisors
- R14-6-202. Supervision
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- R14-6-204. Required Written Examinations
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ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT**R14-6-101. Definitions**

- A.** The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. Title 44, Chapter 13.
- B.** The following definitions shall apply to all rules promulgated under A.R.S. Title 44, Chapter 13, unless the context otherwise requires:
 - 1. "Advertisement" means, except as set forth in subsections (B)(1)(d) and (e), any notice, circular, letter, or other

written, oral, or electronically generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than one person, or any notice or other announcement in any publication or by radio or television, that directly or indirectly offers:

- a. Any analysis, report, or publication that either concerns securities, or is to be used in making any determination as to when to buy or sell any security or which security to buy or sell; or
 - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
 - c. Any other investment advisory service with regard to securities.
 - d. A communication over a computer on-line service including but not limited to an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:
 - i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
 - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
 - e. A communication by one or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
2. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and to use the initials "CPA" after the accountant's name.
 3. "Federal covered adviser" means an investment adviser registered under the Investment Advisers Act of 1940.
 4. "Fixed fee basis" means an investment advisory fee that at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that is not based on the purchase or sale of specific securities.
 5. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1, as required by A.R.S. § 44-3153.
 6. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.
 7. "Impersonal advisory services" means investment advisory services provided solely:

- a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
- b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
- c. Any combination of the foregoing services.
8. "Internet" means all proprietary or common carrier electronic systems, or similar media.
9. "Internet communication" means the distribution of information on the Internet.
10. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or a fiduciary.
11. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
12. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
13. "NASAA" means the North American Securities Administrators Association, Inc., or any successor organization.
14. "NASD" means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
15. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
16. "Rule 204-2" means United States securities and exchange commission rule 204-2, 17 CFR 275.204-2 (1998), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
17. "SEC" means United States Securities and Exchange Commission.
18. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 et seq.
19. "Self-regulatory organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
20. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801.
21. "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Chapter 13 reference updated to reflect current style (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking

action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-102. Scope of Provisions

The following Sections are adopted by the Commission under the authority granted pursuant to A.R.S. Title 44, Chapter 13. Such Sections shall be generally applicable to the administration of the IM Act. When not in conflict with these Sections, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Section heading and Chapter 13 reference updated to reflect current style (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-103. Severability

The provisions of the Sections promulgated under A.R.S. Title 44, Chapter 13, are severable. If any provision of a Section is held to be invalid, such invalidity shall not affect other provisions that can be given effect without the invalid provision.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Chapter 13 reference updated to reflect current style (Supp. 98-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-104. Enforcement of the Arizona Investment Management Act

The provisions relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-105. Processing of Applications for Investment Adviser and Investment Adviser Representative Licensure

- A. For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission under A.R.S. Title 44, Chapter 13, Articles 4 and 5 and the rules promulgated under those statutes.
- B. Within 21 days after receipt of an application for investment adviser or investment adviser representative licensure, the Commission shall notify the applicant, in writing, that the

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application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 21 days after receipt by the Commission of information in satisfaction of all deficiencies.

- C. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-3181. If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-3181. An applicant whose application has been abandoned may reapply by submitting a new application.
- D. Within 60 days after receipt of a complete application, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under A.A.C. R14-4-306. When a notice of an opportunity for a hearing is filed:
 - 1. If the applicant does not request a hearing, the Commission shall approve, deny, or take other appropriate action regarding the application within 70 days after service of the notice.
 - 2. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny, or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
- E. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
 - 1. When the Commission approves an application under subsection (D):
 - a. Administrative completeness review time-frame: 42 days;
 - b. Substantive review time-frame: 60 days;
 - c. Overall time-frame: 102 days.
 - 2. When the Commission initiates the denial process and no hearing is requested under subsection (D)(1):
 - a. Administrative completeness review time-frame: 42 days;
 - b. Substantive review time-frame: 130 days;
 - c. Overall time-frame: 172 days.
 - 3. When the Commission initiates the denial process and a hearing is requested under subsection (D)(2):
 - a. Administrative completeness review time-frame: 42 days;
 - b. Substantive review time-frame: 280 days;
 - c. Overall time-frame: 322 days.
- F. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.
- G. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.
- H. The Commission shall renew a license under this Section upon receipt by the Commission of the license fee, as required by A.R.S. § 44-3181.

Historical Note

Adopted effective September 17, 1998 (Supp. 98-3).
Chapter 13 reference updated to reflect current style (Supp. 98-3).

R14-6-106. General Dissemination of Information on the Internet

- A. Investment advisers and investment adviser representatives who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be transacting business in Arizona for purposes of Article 4 of the IM Act based solely on that activity if the following conditions are observed:
 - 1. The Internet communication includes clear and prominent statements that:
 - a. The investment adviser or investment adviser representative may only transact business in Arizona if first compliant with or exempt from licensure or notice filing requirements.
 - b. The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about rendering investment advice for compensation or solicit or negotiate for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.
 - 2. The investment adviser or investment adviser representative complies with the statements contained in the Internet communication under subsection (A)(1).
 - 3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any subsequent, direct communication with prospective customers or clients in Arizona, the investment adviser or investment adviser representative is first compliant with or exempt from the licensure or notice filing requirements of the IM Act.
 - 4. The Internet communication does not involve either the rendering of investment advice for compensation or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
 - 5. In the case of an investment adviser representative:
 - a. The affiliation with an investment adviser is prominently disclosed in the Internet communication.
 - b. The investment adviser with whom the investment adviser representative is associated first authorizes the Internet communication.
 - c. The investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet communication.
 - d. In distributing information through the Internet, the investment adviser representative acts within the scope of the authority granted by the investment adviser.
- B. Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative is subject to Article 9 of the IM Act and related regulations.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES**R14-6-201. Books and Records of Investment Advisers**

- A. Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers

under rule 204-2. The investment adviser shall file with the Commission a copy of any notices or written undertakings required to be filed by federal covered advisers with the SEC under rule 204-2.

- B. To the extent that the SEC amends rule 204-2, investment advisers in compliance with the requirements contained in rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the requirements contained in the amended rule 204-2.
- C. Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve for at least 5 years the following additional books and records:
 1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint.
 2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards.
 3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that related to any client account, securities, or funds.
- D. Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with rule 204-2(g). Notwithstanding other record preservation requirements of this Section, the following records or copies shall be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:
 1. Records required to be preserved under rule 204-2(a)(3), (a)(7) through (10), (a)(14) through (15), (b), and (c).
 2. Records required to be preserved under subsection (C) of this Section.
- E. A record made and kept under a provision of subsections (A) or (C) that contains all of the information required under any other provision of subsections (A) or (C) in a readily accessible format need not be maintained in duplicate in order to meet the requirements of the other provision.
- F. Any book or other record made, kept, maintained, and preserved in compliance with A.A.C. R14-4-132 that is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this Section shall be deemed to be made, kept, maintained, and preserved in compliance with this Section.
- G. Every investment adviser licensed or required to be licensed in Arizona that has its principal place of business in a state other than Arizona shall be exempt from the requirements of this Section, provided the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking

at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-202. Supervision

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

1. The investment adviser has established and maintained written procedures, and a system for applying such procedures, that reasonably may be expected to prevent and detect, insofar as practicable, any violation of the IM Act or any rule adopted thereunder by such investment adviser representatives or employees; and
2. Such investment adviser has discharged reasonably the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that the investment adviser representatives or employees are not complying with such procedures and system.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-203. Dishonest and Unethical Practices

"Dishonest and unethical practices," with respect to investment advisers and investment adviser representatives subject to A.R.S. § 44-3201(A)(13), shall include but not be limited to the following:

1. Refusing to allow or otherwise impeding the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder.
2. Placing an order to purchase or sell a security for the account of a client without authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.

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8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.
9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.
10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client.
11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:
 - a. Compensation arrangements connected with investment advisory services to clients that are in addition to compensation from such clients for those services; and
 - b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.
12. Guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.
13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so or consented to by the client.
14. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, and the grant of any discretionary power to the investment adviser.
15. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV.
16. Entering into, extending, modifying, or renewing any investment advisory contract that allows the assignment of such contract by the investment adviser without the prior written consent of the client.
17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or would operate as fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder.
18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. Title 44, Chapter 12.
19. Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-204. Required Written Examinations

- A. Except as otherwise provided in subsections (B) and (C), all natural persons applying for licensure as an investment adviser or an investment adviser representative under A.R.S. Title 44, Chapter 13, Article 4 shall have taken and passed:
 1. The Uniform Investment Adviser Law Examination (Series 65 examination); or
 2. The Uniform Combined State Law Examination (Series 66 examination) and either the General Securities Registered Representative Examination (Series 7 examination) or the General Securities Representative (nonmember) Examination (Series 2 examination).
- B. An applicant who has taken the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Combined State Law Examination (Series 66 examination) prior to December 31, 1999, shall have taken and received a score of at least 70% on:
 1. The NASAA Uniform Investment Adviser Law Examination (Series 65 examination) or Combined State Law Examination (Series 66 examination); and
 2. The NASD General Securities Registered Representative Examination (Series 7 examination) or the General Securities Representative (nonmember) Examination (Series 2 examination).
- C. An applicant shall not be required to comply with subsections (A) or (B) if the applicant currently holds any one of the following professional designations and is currently in good standing with the associated organization:
 1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;
 2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts;
 3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania;
 4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.; or

5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.
- D. An applicant must have satisfied the examination requirements of this Section within 12 months prior to application if the applicant has not been registered or licensed as an investment adviser or investment adviser representative in at least one state during the two-year period preceding application.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 472, effective December 30, 1999 (Supp. 99-4).

R14-6-205. Information to be Furnished to Clients (“Brochure Rule”)

- A. Each investment adviser licensed or required to be licensed under the IM Act shall furnish each client and prospective client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of Form ADV.
- B. The information required to be disclosed by subsection (A) shall be disclosed to clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- C. An investment adviser need not deliver the statement required by subsection (A) in connection with entering into an investment company contract or a contract for impersonal advisory services. The investment adviser shall, however, offer in writing to deliver the statement within 7 business days upon receipt of a written request.
- D. Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall annually deliver, or offer in writing to deliver within 7 business days upon receipt of a written request, the statement required by this Section.
- E. If an investment adviser licensed or required to be licensed under the IM Act renders substantially different types of investment advisory services to different clients, any information required by Part II of Form ADV may be omitted from the statement furnished to the client or prospective client if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- F. Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the IM Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Section.
- G. An investment adviser licensed or required to be licensed under the IM Act that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the programs, shall, in lieu of the written disclosure statement required by subsection (A) and in accordance with the other subsections of this Section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV. Any additional information included in such disclosure shall be limited to information concerning wrap fee programs sponsored by the investment adviser.
- H. If the investment adviser is required under subsection (G) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.
- I. An investment adviser need not furnish the written disclosure statement required by subsection (G) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1). At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-206. Custody of Client Funds or Securities by Investment Advisers

- A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:
1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.
 2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss.
 3. All client funds are deposited in one or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.
 4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client within 10 business days.
 5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period.
 6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the

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investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 calendar days after the examination.

- B.** With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-207. Suitability of Investment Advisory Services

- A.** Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:

1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and
2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (A)(1) above.

- B.** With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives

- A.** Except as otherwise provided in subsection (D), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:

1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.
2. Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within

the immediately preceding period of not less than one year if the investment adviser or investment adviser representative also furnishes:

- a. The name of each security recommended, the date and nature of each recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and
 - b. The following legend on the 1st page in prominent print or type: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."
3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.
 4. Which represents, directly or indirectly, that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.
 5. Which states that the Commission has approved any advertisement.
- B.** When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.
- C.** Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.
- D.** With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-209. Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients

- A.** Except as otherwise provided in subsection (F), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over the client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance.

2. A legal or disciplinary event that is material to an evaluation of the investment adviser's or an investment adviser representative's integrity or ability to meet contractual commitments to clients.
 3. A failure to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. Title 44, Chapter 12.
- B.** It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser, an investment adviser representative, or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (A)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (A)(2) for events not specifically set forth in this subsection.
1. A criminal or civil action in a court of competent jurisdiction in which the person:
 - a. Was convicted or pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
 - b. Was found to have been involved in a violation of an investment-related statute or rule; or
 - c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity.
 2. An administrative proceeding before the SEC, the Commission, or any federal or state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
 - a. Was found to have caused an investment-related business to lose its authorization to do business; or
 - b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.
 3. SRO proceedings in which the person:
 - a. Was found to have caused an investment-related business to lose its authorization to do business; or
 - b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.
- C.** The information required to be disclosed by subsection (A) shall be disclosed to clients within 30 calendar days after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- D.** For purposes of calculating the 10-year period during which events are presumed to be material under subsection (B), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.
- E.** Compliance with subsection (B) shall not relieve any investment adviser from the disclosure obligations of subsection (A); compliance with subsection (A) shall not relieve any investment adviser from any other disclosure requirement under the IM Act, the rules thereunder, or under any other state or federal law. Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (C).
- F.** With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

Historical Note

Adopted effective July 19, 1996, under a court-ordered exemption as determined by the Arizona Corporation Commission (Supp. 96-3). Amended by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

At the request of the Corporation Commission, the preceding entry in this Historical Note is amended: the Commission intended the rulemaking action to reflect that the Section was repealed and a new Section was made at 7 A.A.R. 739, effective January 17, 2001 (Supp. 02-4).

R14-6-210. Licensure of Investment Adviser Representatives

- A.** The definition of investment adviser representative in A.R.S. § 44-3101 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:
1. Is a supervised person and meets all of the following conditions:
 - a. Has more than 5 clients who are natural persons, other than excepted persons.
 - b. Has clients more than 10% of whom are natural persons, other than excepted persons.
 - c. On a regular basis, solicits, meets with, or otherwise communicates with clients of the investment adviser or provides other than impersonal advisory services.
 2. Is not a supervised person.
- B.** For purposes of this Section:
1. "Excepted person" means a natural person who:
 - a. Immediately after entering into the investment advisory contract with the investment adviser has at least \$750,000 under management with the investment adviser, or
 - b. The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than \$1,500,000.
 2. "Supervised person" means any partner, officer, director, or other person occupying a similar status or performing similar functions, or employees of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.
 3. "Place of business" means:

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- a. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or
 - b. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.
- C.** A person who employs one or more investment adviser representatives who solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of an investment adviser shall comply with A.R.S. § 44-3151 unless each investment adviser representative is also employed by the investment adviser on whose behalf the activity is conducted.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1). Subsection (C) amended from “that employees 1” to “who employs one” to correct text submitted by the Corporation Commission (Supp. 01-2).

R14-6-211. Solicitation

- A.** An individual shall not be included in the definition of investment adviser representative under A.R.S. § 44-3101(3)(d) if that individual meets both of the following conditions:
- 1. The individual does not on a regular basis give advice regarding, or recommend the services of, an investment adviser or an investment adviser representative.
 - 2. The individual does not accept or receive directly or indirectly any commission, fee, or other remuneration in connection with a referral to or recommendation of the services of an investment adviser or an investment adviser representative.
- B.** The term “remuneration” shall be broadly construed, but shall not include the exchange of client referrals between professionals without an exchange of additional compensation.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).

R14-6-212. Application, Notice Filing, and Renewal Requirements

- A.** An application for licensure as an investment adviser under A.R.S. § 44-3153(B) shall include the following:
- 1. Form ADV with all information and exhibits required by the form.
 - 2. An audited balance sheet if the investment adviser will have custody of client funds or if the investment adviser requires the payment of advisory fees six months or more

in advance and in excess of \$500 for each client. The audited balance sheet shall be based on the investment adviser’s fiscal year end, shall be prepared in accordance with generally accepted accounting principles, and shall be audited by an independent certified public accountant. The notes to the balance sheet shall state the principles used to prepare the balance sheet, the basis of included securities, and any other explanation required for clarity.

- 3. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:
 - a. That a review of the records of the investment adviser has been conducted.
 - b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.
 - 4. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.
 - 5. If part II of the Form ADV is not used as a disclosure brochure, the applicant shall submit a copy of the disclosure brochure the applicant gives or will give to clients.
 - 6. The documents and fees required for each investment adviser representative as described in subsection (C).
 - 7. The annual licensure fee required by A.R.S. § 44-3181(A).
- B.** A notice filing under A.R.S. § 44-3153(D) shall include the following:
- 1. Form ADV, part 1.
 - 2. The documents and fees required for each investment adviser representative as described in subsection (C).
 - 3. The annual notice filing fee required by A.R.S. § 44-3181(A).
- C.** An application for an investment adviser representative licensure under A.R.S. § 44-3156 shall include the following:
- 1. A complete Form U-4.
 - 2. Proof of successful completion of required examinations in accordance with A.A.C. R14-6-204.
 - 3. The annual licensure fee required by A.R.S. § 44-3181(A).
- D.** For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.
- E.** For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 739, effective January 17, 2001 (Supp. 01-1).